

SITE DEVELOPMENT PERMIT AMENDMENT

FILE NO.	HA03-048-02
LOCATION OF PROPERTY	Northwest corner of East Capitol Expressway and McLaughlin Avenue intersection (1035 East Capitol Expressway)
ZONING DISTRICT	CN Neighborhood Commercial
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial
PROPOSED USE	Site Development Permit Amendment to amend a previously approved Site Development Permit (File No. H03-048) to allow exterior modifications to the façade of two existing buildings on an approximately 15.47-gross acre site.
ENVIRONMENTAL STATUS	Exempt pursuant to CEQA Guidelines Section 15301 for Existing Facilities
OWNER	H K N IV LLC 14523 Sobey Road Saratoga CA 95070
APPLICANT'S REPRESENTATIVE	William Hagman 11824 Chestnut Street Menlo Park CA 94025

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located within an existing commercial shopping center. The proposed modifications would be to two commercial buildings located on the northern portion of the commercial center. The center is located at the northwest corner of East Capitol Expressway and McLaughlin Avenue intersection, and is surrounded by single-family residences to the north, east, and south and vacant land to the west.
2. **Project Description.** Site Development Permit Amendment to amend a previously approved Site Development Permit (File No. H03-048) to allow exterior modifications to the façade of two existing buildings on an approximately 15.47-gross acre site.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use / Transportation Diagram designation of Neighborhood/Community Commercial.

The subject site is designated **Neighborhood/Community Commercial (NCC)** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan.

Neighborhood/Community Commercial Density: FAR Up to 3.5 (1 to 5 stories)

This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood / Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

The existing use is neighborhood shopping center, and the exterior modification of facades would not constitute an expansion of use.

The following General Plan goals address community design, and the project is consistent.

- a. CD-1.1 Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
- b. CD-1.11 To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent facades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.
- c. LU-5.6 Encourage and facilitate the upgrading, beautifying, and revitalization of existing strip commercial areas and shopping centers.

The proposed project includes façade improvements to the three existing buildings (Building A, Building B, and Building C) located in the Gould Shopping Center. The façade improvement renovates the existing neighborhood shopping center with varied and articulated facades by using changes in material, colors, and roofline. Furthermore, the façade improvement modernizes the three buildings to achieve design harmony with the existing auxiliary structures in the front of the shopping center.

4. **Zoning Conformance.** Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit/Amendment is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure in conformance with the applicable zoning regulations. The project conforms in all respects to the provisions of Title 20 of the San José Municipal Code, including the development standards of the Commercial Neighborhood CN Zoning District. The project is consistent with the regulations of the Zoning Ordinance in the following manner:

- a. **Use.** The existing Neighborhood Shopping Center use is a permitted use in the Commercial Neighborhood CN Zoning District.

- b. **Setbacks and Height.** The maximum allowable height for the CN Zoning District is 50-feet. The highest proposed element of the building is 44-feet 6-inches. There are no changes to the front setbacks and side corner setbacks to the existing buildings. The project is therefore consistent with the development standards for the subject site.
 - c. **Parking.**
Vehicle Parking Required: 1 per 225 sq. ft. of floor area
Bicycle Parking Required: 1 per 3,000 sq. ft. of floor area
 - d. **Analysis:** There are no changes to the number of off-street vehicle parking spaces and bicycle parking spaces. 609 vehicle parking spaces are required, and 710 of existing vehicle parking spaces are provided. 44 bicycle parking spaces are required, and 50 bicycle parking spaces are provided.
5. **Design Guidelines Conformance.** The exterior façade remodeling to the existing commercial shopping center includes variation in building height and articulation as well as changes in materials. The proposed project would share architectural elements and materials with the existing auxiliary structures in the front of the shopping center along Capitol Expressway to achieve design harmony and continuity within the shopping center.
6. **Site Development Permit Findings.** [Section 20.100.630](#) of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.
- a. The site development permit amendment, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.
Analysis: The proposed project is consistent with the Envision San José 2040 General Plan's Land Use/Transportation Diagram as identified above. The exterior façade improvement will revitalize the existing neighborhood shopping center and modernize the three buildings to achieve design harmony and further continuity within the shopping center.
 - b. The site development permit amendment, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.
Analysis: As identified above, the project conforms to the setback and height requirements as the new proposed height of 44-feet 6-inches is in conformance the maximum allowable 50-feet and no changes are proposed to the setback requirements.
 - c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.
Analysis: The project is subject to the Public Outreach Policy. The on-site sign was posted and the project was noticed at a 1000-foot radius. Staff was available for public inquires, and the file was available for viewing. The project is consistent with the policy.
 - d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
Analysis: The exterior façade remodeling proposed are compatible and aesthetically harmonious with the auxiliary structures in the front of the shopping center with respect to materials, colors, and variation in roofline.

- e. The orientation, location and elevations of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The project does not propose any new freestanding buildings. The building is oriented in the same location of the previous entrance. The proposed additions are architecturally consistent with the auxiliary structures in the front of the shopping center which will result in a more aesthetically harmonious shopping center. Therefore, the proposed project maintains the character of the neighborhood.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The proposed project complies with CEQA Guidelines Section 15301 for Existing Facilities. The proposed project is limited in scope to exterior façade remodeling to the existing commercial buildings totaling approximately 155,389 square foot. The noise is limited to the construction period of the project during the posted construction hours between 7:00 a.m. and 7:00 p.m., Monday to Friday. The subject site is served by all public services including water, sewer, and trash. Therefore, the project will not have an unacceptable negative effect on adjacent property or properties.

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The project is only proposing exterior façade modifications to the three existing buildings. There are no changes to the existing landscape being proposed.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The proposed project provides sufficient vehicular driveways and pedestrian access points. A total of 710 parking spaces are provided in excess to the Zoning Ordinance requirement of 609. There are no changes to the sufficient driveway curbs cuts and driveways that are on site to provide access to the site without interfering with off-site circulation. The existing pedestrian walkways will remain on all major building entrances.

7. **Amendment Findings.** [Section 20.100.640](#) of the San Jose Municipal Code establishes required findings for issuance of an Amendment Permit.

- a. Amendments to an approved site development permit may only be approved if there is a finding by the director, or planning commission on appeal, that the amendment does not negate any findings required by [Section 20.100.630](#).

Analysis: As identified above, the proposed project meets all and does not negate any of the finding required by Section 20.100.630.

- b. Nothing in this section shall preclude the director, or the planning commission on appeal, from modifying, adding or deleting any condition in order to protect the public peace, health, safety, morals or welfare.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Fruitdale Gardens Driveway & Pedestrian Gates" dated received May 21, 2019, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or any other law.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.

9. **Tree Removals.** No trees are approved as a part of this permit. Any tree(s) to be removed must be processed through a separate permit.
10. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
11. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48-hours of defacement, including job sites for projects under construction.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
13. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
14. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
15. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
16. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
17. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

18. Construction Impact Minimization Measures. The permittee is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.

- a. *Compliance.* The permittee shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the permittee, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
- b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
- c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- d. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- e. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
- f. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The permittee shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- g. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures

warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San José upon request.

- h. *Posting of Telephone Number.* The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number H16-003, shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.
 - i. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
 - j. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
19. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **12th day of February, 2020.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy